



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[EPA-R06-OW-2015-0121; FRL-9934-25-Region 6]

Ocean Dumping: Modification of Final Site Designation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) today is modifying the use restrictions of the Galveston, TX Dredged Material Site, Freeport Harbor, TX, New Work (45 Foot Project), Freeport Harbor, TX, Maintenance (45 Foot Project), Matagorda Ship Channel, TX, Corpus Christi Ship Channel, TX, Port Mansfield, TX, Brazos Island Harbor, TX and Brazos Island Harbor (42-Foot Project), TX Ocean Dredged Material Disposal Sites (ODMDSs) located in the Gulf of Mexico offshore of Galveston, Freeport, Matagorda, Corpus Christi, Port Mansfield and Brownsville, Texas, respectively. These sites are EPA designated ocean dumping sites for the disposal of suitable dredged material. This action is being taken at the request of the United States Army Corps of Engineers Galveston District to allow disposal of suitable dredged material from the vicinity of the federal navigation channels to alleviate pressure on the capacity of their upland dredged material placement areas, when necessary.

DATES: This document is effective on **[Insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: The EPA established a docket for this action under Docket No. EPA-R06-OW-2015-0121. All documents in the docket are listed on the <http://www.regulations.gov> website.

Publically available docket materials are available electronically through <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Jessica Franks, PhD, Marine and Coastal Section (6WQ-EC), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733, telephone (214) 665-8335, fax number (214) 665-6689; e-mail address franks.jessica@epa.gov.

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A. Potentially Affected Persons

Persons potentially affected by this action include those who seek or might seek permits or approval by EPA to dispose of dredged material into ocean waters pursuant to the Marine Protection Research and Sanctuaries Act, 33 U.S.C. 1401 *et seq.* EPA's action would be relevant to persons, including organizations and government bodies seeking to dispose of dredged material in ocean waters offshore of Galveston, Freeport, Matagorda, Corpus Christi, Port Mansfield and Brownsville, Texas. Currently, the U.S. Army Corps of Engineers (Corps) and other persons with permits to use designated sites offshore of Galveston, Freeport, Matagorda, Corpus Christi, Port Mansfield, and Brownsville, Texas would be most impacted by this final action. Potentially affected categories and persons include:

Category	Examples of potentially regulated persons
Federal government	USACE Civil Works and O & M projects; other Federal agencies, including the Department of Defense.
Industry and general public ...	Port authorities, marinas and harbors, shipyards and marine repair facilities, berth owners
State, local and tribal governments	Governments owning and/or responsible for ports, harbors, and/or berths, Government agencies requiring disposal of dredged material associated with public works projects

This table is not intended to be exhaustive, but rather provides a guide for readers regarding persons likely to be affected by this action. For any questions regarding the applicability of this action to a particular entity, please refer to the contact person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act (MPRSA) of 1972, as amended, 33 U.S.C. 1401 et seq., gives the Administrator of EPA the authority to designate sites where ocean disposal may be permitted. On October 1, 1986, the Administrator delegated the authority to designate ocean disposal sites to the Regional Administrator of the Region in which the sites are located. These modifications are being made pursuant to that authority.

The EPA Ocean Dumping Regulations promulgated under MPRSA (40 CFR Chapter I, Subchapter H, Section 228.11) state that modifications in disposal site use which involve withdrawal of disposal sites from use or permanent changes in the total specified quantities or types of waste permitted to be discharged to a specific disposal site will be made by promulgation in this Part 228. This site modification of types of waste permitted to be discharged to a specific disposal site are being published as a final rulemaking in accordance with §228.11(a) of the Ocean Dumping Regulations, which permits changes in the total specified quantities or types of waste permitted to be discharged to a specific disposal site based upon changed circumstances concerning use of the site.

C. Final Action

The modifications of the use restrictions on the Galveston, TX, Dredged Material Site, Freeport Harbor, TX, New Work (45 Foot Project), Freeport Harbor, TX, Maintenance (45 Foot Project), Matagorda Ship Channel, TX, Corpus Christi Ship Channel, TX, Port Mansfield, TX, Brazos Island Harbor, TX and Brazos Island Harbor (42-Foot Project), TX ODMDSs was requested by the U.S. Army Corps of Engineers Galveston District in a March 27, 2015 letter.

The current wording within the 40 CFR 228.15 restricts the use of these ODMDS to only dredged material originating from specific federal channel reaches associated with each ODMDS. For Freeport Harbor, TX, New Work (45 Foot Project) ODMDS and the Brazos Island Harbor (42-Foot Project), the ODMDSs are restricted to receive only construction dredged material from channel improvement projects at Freeport and Brazos Island Harbor, respectively. Modeling shows that future disposal capacity is limited at the placement areas typically used by the Galveston District when ocean disposal is not an option. As a result of these limitations,

there is a need to change the use restrictions placed on these ODMDs to include suitable dredged material from the greater vicinities of the respective federal channels. The restriction modification will provide for sufficient future dredged material disposal capacity for material originating from dredging areas within each Federal channel and its vicinity. .

D. Responses to Comments

The proposed rule was published in the Federal Register on June 18, 2015 (80 FR 34871), as docket number EPA- EPA-R06-OW-2015-0121. The comment period closed on August 3, 2015. The EPA received one letter on the proposed rule from the Department of Interior stating that they have no comment. As no comments were received, the EPA has no responses to comments for the proposed rule.

E. Administrative Review

1. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993) EPA must determine whether the regulatory action is ‘significant,” and therefore subject to office of Management and Budget (OMB) review and other requirements of the Executive Order. The Order defines “significant regulatory action” as one that is likely to lead to a rule that may:

- (a) Have an annual effect on the economy of \$100 million or more, or adversely affect in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities;
- (b) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (c) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof: or

(d) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order.

This Final rule should have minimal impact on State, local, or Tribal governments or communities. Consequently, EPA has determined that this Final rule is not a “significant regulatory action” under the terms of Executive Order 12866.

2. Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, is intended to minimize the reporting and recordkeeping burden on the regulated community, as well as to minimize the cost of Federal information collection and dissemination. In general, the Act requires that information requests and record-keeping requirements affecting ten or more non-Federal respondents be approved by OMB. Since the Final rule would not establish or modify any information or recordkeeping requirements, but only clarifies existing requirements, it is not subject to the provisions of the Paperwork Reduction Act.

3. Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

This Final rule will not impose any requirements on small entities. The modification of the Galveston, TX, Dredged Material Site, Freeport Harbor, TX, New Work (45 Foot Project), Freeport Harbor, TX, Maintenance (45 Foot Project), Matagorda Ship Channel, TX, Corpus

Christi Ship Channel, TX, Port Mansfield, TX, Brazos Island Harbor, TX and Brazos Island Harbor (42-Foot Project), TX ODMDs broadens the use of the sites providing additional options for dredged material placement in the Galveston, Freeport, Matagorda, Corpus Christi, Port Mansfield and Brownsville, Texas vicinities.

For these reasons, the Regional Administrator certifies, pursuant to section 605(b) of the RFA, that the Final rule will not have a significant economic impact on a substantial number of small entities.

4. Unfunded Mandates Reform Act

This final rule contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) of 1995 (Pub. L. 104-4) for State, local, or tribal governments or the private sector that may result in estimated costs of \$100 million or more in any year. It imposes no new enforceable duty on any State, local or tribal governments or the private sector nor does it contain any regulatory requirements that might significantly or uniquely affect small government entities. Thus, the requirements of section 203 of the UMRA do not apply to this final rule.

5. Executive Order 13132: Federalism

Executive Order 13132, entitled “Federalism” (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory *policies that have federalism implications*. “*Policies that have federalism implications*” are defined in the Executive Order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.”

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132.

6. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure “meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications.” This Final rule does not have Tribal implications, as defined in Executive Order 13175.

7. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks

This Executive Order (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be “economically significant” as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA. This final rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because EPA does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

8. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use Compliance with Administrative Procedure Act

This Final rule is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

9. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law 104-113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. This Final rule does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

10. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations

Executive Order 12898 (59 FR 7629) directs Federal agencies to determine whether the Final rule would have a disproportionate adverse impact on minority or low-income population groups within the project area. The Final rule would not significantly affect any low-income or minority population.

List of Subjects in 40 CFR Part 228

Environmental protection, Water pollution control.

Dated: September 9, 2015.

Ron Curry,
Regional Administrator, Region 6.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

**PART 228— CRITERIA FOR THE MANAGEMENT OF DISPOSAL SITES FOR
OCEAN DUMPING**

1. The authority citation for part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

2. Section 228.15 is amended by revising paragraphs (j)(12)(vi), (j)(13)(vi), (j)(14)(vi), (j)(15)(vi), (j)(17)(vi), (j)(18)(vi), (j)(19)(vi), and (j)(20)(vi) to read as follows:

§ 228.15 Dumping sites designated on a final basis.

* * * * *

(j) * * *

(12) * * *

(vi) *Restrictions:* Disposal shall be limited to suitable dredged material from the greater Houston-Galveston, Texas vicinity. Disposal shall comply with conditions set forth in the most recent approved Site Management and Monitoring Plan.

(13) * * *

(vi) *Restrictions:* Disposal shall be limited to suitable dredged material from the greater Freeport, Texas vicinity. Disposal shall comply with conditions set forth in the most recent approved Site Management and Monitoring Plan.

(14) * * *

(vi) *Restrictions:* Disposal shall be limited to suitable dredged material from the greater Freeport, Texas vicinity. Disposal shall comply with conditions set forth in the most recent approved Site Management and Monitoring Plan.

(15) * * *

(vi) *Restrictions:* Disposal shall be limited to suitable dredged material from the greater Matagorda, Texas vicinity. Disposal shall comply with conditions set forth in the most recent approved Site Management and Monitoring Plan.

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(17) * * *

(vi) *Restrictions:* Disposal shall be limited to suitable dredged material from the greater Corpus Christi, Texas vicinity. Disposal shall comply with conditions set forth in the most recent approved Site Management and Monitoring Plan.

(18) * * *

(vi) *Restrictions:* Disposal shall be limited to suitable dredged material from the greater Port Mansfield, Texas vicinity. Disposal shall comply with conditions set forth in the most recent approved Site Management and Monitoring Plan.

(19) * * *

(vi) *Restrictions:* Disposal shall be limited to suitable dredged material from the greater Brownsville, Texas vicinity. Disposal shall comply with conditions set forth in the most recent approved Site Management and Monitoring Plan.

(20) * * *

(vi) *Restrictions:* Disposal shall be limited to suitable dredged material from the greater Brownsville, Texas vicinity. Disposal shall comply with conditions set forth in the most recent approved Site Management and Monitoring Plan.

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[FR Doc. 2015-23475 Filed: 9/17/2015 08:45 am; Publication Date: 9/18/2015]